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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Civil Action No. _____

Plaintiff,

COMPLAINT

v.

UNION PACIFIC RAILROAD COMPANY,

Defendants.

The United States of America, by and through the undersigned attorneys, under the authority of the Attorney General of the United States, and for and at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), hereby files this Complaint and alleges as follows:

STATEMENT OF THE CASE

1. This is a civil action instituted pursuant to Sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), as amended, 42 U.S.C. §§ 9606, 9607(a), seeking (1) the performance of studies and response work by the Defendant at the Ogden Rail Yard Site ("Site") in Weber County, Utah, consistent with the National Oil and Hazardous Substances Pollution Contingency Plan, as amended, 40 C.F.R. Part 300 ("National Contingency Plan"); and (2) to recover funds expended by the United States in response to a release and threatened release of hazardous substances at the Site. The United States also seeks a declaratory judgment, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), and 28 U.S.C. § 2201, on the Defendant's liability for further response costs that will be binding in any subsequent action or actions to recover such costs.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action and the parties hereto pursuant to Sections 104, 106, 107(a), and 113(b) of CERCLA, 42 U.S.C. §§ 9604, 9606, 9607(a), and 9613(b), as well as 28 U.S.C. §§ 1331, 1345, and 1355.

3. Venue in this judicial district is proper pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), as well as 28 U.S.C. § 1391(b) - (c).

DEFENDANT

4. Union Pacific Railroad Company is a Delaware corporation conducting business in the State of Utah. Union Pacific is the owner and operator of facilities located at the Site within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

FACTUAL BACKGROUND

5. The Site encompasses an active rail yard that has been in use since 1869 when the first transcontinental railroad was built through the area. The Site is approximately 3.5 miles long and one-half mile wide encompassing approximately 1,120 acres, and is located west of downtown Ogden, Utah. It is bounded on the west by the Weber River, on the north by the 21st Street Pond and the Ogden River, on the east by Wall Avenue, and on the south by Riverdale Road.

6. The 21st Street Pond at the northern end of the Site was created in 1973 when the Utah Department of Transportation obtained farm land to use as a borrow pit for sand and gravel needed in construction of nearby highways. Eventually, the pit was filled with water from an intake structure on the Ogden River, and stocked with fish by the Utah Department of Parks and Recreation. After fish in the pond tested positive for polychlorinated biphenyls ("PCBs"), the 21st Street Pond was closed to fishing.

7. Throughout the Site, a wide variety of railroad related facilities have been located, including fueling stations, storage tanks, marshaling yards, locomotive repair and maintenance shops, grain elevators, freight offices, coal yards, machine and boiler shops, treatment plants, turntables and roundhouse and 125 miles of switching tracks. From 1891 to about 1935, the

Pintsch Gas plant operated at the northern end of the Site. The plant provided Pintsch Gas, a petroleum based gas used in rail cars during that time for lighting.

RESPONSE ACTION

8. In the early 1990s, EPA began investigating the release of hazardous substances at the Site. Petroleum contaminated soils and sludges were discovered and subsequently removed by Union Pacific under an administrative order issued by EPA. Additional investigations revealed that sediments in the 21st Street Pond were contaminated with dense non-aqueous phase liquids (“DNAPLs”) composed of high molecular weight petroleum compounds called polycyclic aromatic hydrocarbons. Specifically, the DNAPL contamination includes arsenic, benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenzo(a,h)anthracene, and indeno(1,2,3-cd)pyrene, among other hazardous substances.

9. Further, two contaminated groundwater plumes characterized by fuels, solvents, chlorinated hydrocarbons and degradation products, were discovered at the Site. Specifically, the Northern chlorinated volatile organic compounds (“CVOC”) plume includes vinyl chloride, 1,2-dichloroethylene (“DCE”), and trichloroethene (“TCE”), among other hazardous substances. The Southern CVOC plume tested positive for vinyl chloride, 1,1-DCE, and TCE.

10. On September 30, 2004, EPA issued two Records of Decision (“RODs”) selecting response actions to address the contaminated sediment in the 21st Street Pond and the contaminated ground water plumes underlying the Site. The ROD for Operable Unit One (“OU1”) (21st Street Pond) provides for the capping of the contaminated sediments, construction of a cofferdam and collection sumps to prevent further migration of wastes, removal of mobile

DNAPLs from the nearby former Pintsch Gas Plant, monitoring of the pond, institutional controls to prevent use of ground water in the area, and protection of the integrity of the cap. The ROD for Operable Unit Four ("OU4") (ground water) provides for removal of wastes in and near the Site's former industrial sewer, monitored natural attenuation of chlorinated solvents and degradation products, design of a contingency remedy for implementation should the solvent plume move toward receiving waters, and institutional controls to prevent ground water use.

FIRST CLAIM FOR RELIEF

11. Paragraphs 1-10 are re-alleged and incorporated herein by reference.

12. Section 104(a)(1) and (b) of CERCLA, 42 U.S.C. § 9604(a)(1) and (b), provides that whenever there is a release or threat of release of a hazardous substance into the environment, the President is authorized to take any response action necessary and consistent with the National Contingency Plan, 40 C.F.R. Part 300, to protect the public health or welfare of the environment, and recover the costs thereof. Id.

13. The President has delegated his authority under Section 104(a) and (b) of CERCLA, 42 U.S.C. § 9604(a) and (b), to the Administrator of the EPA to arrange for the cleanup of hazardous waste or to conduct investigations and studies as necessary to determine the need for, and extent of, such a cleanup.

14. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in pertinent part that the following persons shall be liable under CERCLA for the costs incurred by the United States in responding to releases or threatened releases of hazardous substances:

(1) the owner and operator of a vessel or a facility, [and]

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of

15. The Defendant is a "person" within the meaning of Sections 101(21) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(21), 9607(a).

16. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

17. Sampling at the Site has revealed the presence of numerous hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) and 40 C.F.R. § 302.4. These hazardous substances, including but not limited to those identified in Paragraphs 8-9 above, include various dense non-aqueous phase liquids, and chlorinated volatile organic compounds.

18. The hazardous substances found at the Site have been and are being released into the environment at and around the Site, as described in Paragraphs 8-9, above, within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), and there is a threat that such releases will occur in the future.

19. The actions taken by the United States in connection with the Site constitute "response" actions within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25). The United States has undertaken and is continuing to undertake necessary response actions in connection with the Site for purposes authorized by Section 104 of CERCLA, 42 U.S.C. § 9604.

20. The United States has incurred and will continue to incur response costs in connection with the Site.

21. The response actions taken by the United States were necessary to protect the public health or welfare or the environment, and were consistent with the National Contingency Plan, 40 C.F.R. Part 300.

22. Therefore, Defendant is liable under Sections 107(a) and 113(g)(2) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(g)(2), for all response costs incurred and to be incurred by the United States in a manner not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300, in connection with the response action described in Paragraphs 8-10, above.

SECOND CLAIM FOR RELIEF

23. Paragraphs 1-22 are re-alleged and incorporated herein by reference.

24. Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), provides in pertinent part:

In addition to any other action taken by a State or local government, when the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may require the Attorney General of the United States to secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.

25. By Executive Order 12580 dated January 23, 1987, the President's functions under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), have been delegated to the Administrator of EPA.

26. EPA has determined that there is or may be an imminent and substantial endangerment to the public health or welfare or the environment because of actual or threatened releases of hazardous substances from the Site.

27. Therefore, the Defendant is liable for the injunctive relief to which the United States is entitled at OU1 and OU4 of the Site, as described in Paragraph 10, above, under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), including, but not limited to, such relief as may be necessary to abate the imminent and substantial endangerment to the public health or welfare or the environment caused by the release or threatened release of hazardous substances from OU1 and OU4.

REQUEST FOR RELIEF

Wherefore, Plaintiff, the United States of America, requests that this Court:

(1) Enter a judgment in favor of the United States and against Defendant pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for all response costs incurred and to be incurred in connection with the response actions conducted at the Site and described above, together with prejudgment interest and all costs of enforcement;

(2) Enter a declaratory judgment in favor of the United States and against Defendant pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), for further response costs that will be binding in any subsequent action or actions by the United States against Defendant to recover any further response costs related to the Site;

(3) Enter a judgment in favor of the United States and against Defendant pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), for the performance of all actions necessary to remedy the conditions at OU1 and OU4 that may present an imminent and substantial endangerment to the public health, welfare or the environment;

(4) Provide such other and further relief as may be just and proper.

Dated this _____ day of _____, 2006.

Respectfully submitted,

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